

INFORMATION REGARDING RIGHTS AFTER ATTORNEY-CLIENT FEE ARBITRATION

1. RIGHTS AFTER NONBINDING ARBITRATION

A. What are my rights if I am not satisfied with a nonbinding attorney-client fee arbitration award?

If the arbitration award is nonbinding, you may have a right to a trial in court. If you did not appear at your fee arbitration hearing, however, you will have to prove to the court that you had a good reason for not being there. If a court determines that your failure to appear was willful, you may not be entitled to a trial after arbitration. If you want a trial in court, you should follow the instructions below to protect your rights.

B. What must I do to get a trial in court?

You must file papers in the proper court within the required time limit.

C. How long do I have to act?

If you want a trial in court, you must file your papers in court within 30 days after the date the arbitration award was mailed to you. The date the arbitration award was mailed is written at the end of the notice you received.

D. What papers must I file? In what court must I file them?

That depends. Has a lawsuit about the fees already been filed?

(1) YES—lawsuit already filed

If a lawsuit about the fees has already been filed, then you must file a request for a trial in the same court where the lawsuit was filed, under the same case number as the lawsuit that is pending. If the lawsuit is in small claims court, you can use Judicial Council forms SC-100 and SC-101 to request a trial. If the lawsuit is in superior court, you can use form ADR-103 to request a trial after a nonbinding attorney-client fee arbitration; see box 9d on page 2 of form ADR-103.

(2) NO—lawsuit not yet filed

If no lawsuit about the fees has been filed, then you must file your own action in the proper court if you do not want the arbitration award to become binding. You may file your action in small claims court if the amount in dispute is \$5,000 or less. You can use Judicial Council forms SC-100 and SC-101 to file an action in small claims court. If the amount in dispute is more than \$5,000, the superior court is the proper court in which to file your action. You may need a lawyer's help to file an action in superior court. You cannot use form ADR-103 to file such an action.

E. What if I am satisfied with the award?

If you are satisfied with the nonbinding award, do nothing until the award becomes binding or the other party requests a trial. The award will become binding if the other party does not file papers requesting a trial in court within the 30-day limit.

F. What are my rights if the award becomes binding? Read item 2 below.

2. RIGHTS AFTER BINDING ARBITRATION

A. What are my rights if I am not satisfied with a binding attorney-client fee arbitration award?

If the arbitration award is binding, in most cases you must obey it. There is no appeal from a binding award. A court has the power to "vacate" (cancel) an arbitration award, but only for the following narrow reasons:

- (1) The award was obtained by corruption, fraud, or other unfair means.
- (2) One or more of the arbitrators was corrupt.
- (3) The misconduct of a neutral arbitrator substantially prejudiced your rights.
- (4) The arbitrators exceeded their authority and the award cannot be fairly corrected.
- (5) The arbitrators unfairly refused to postpone the hearing or to hear evidence useful to settling the dispute.
- (6) An arbitrator failed to disclose within the time for disclosure a ground for disqualification of which the arbitrator was then aware.
- (7) An arbitrator should have disqualified himself or herself after you made a demand to do so.

A court can also correct the following types of obvious mistakes in the award:

- (1) The amount of award was not calculated correctly, or a person, a thing, or property was not described correctly.
- (2) The arbitrators exceeded their authority.
- (3) The award is imperfect as a matter of form.

If you think you are entitled to correct or vacate the arbitration award, please follow the instructions below to protect your rights.

B. What must I do to vacate or correct the binding arbitration award?

You must file a petition in the proper court within the required time limit.

C. How long do I have to act?

If you want to correct or vacate the binding award, you must file your petition within 100 days after the date the arbitration award was mailed to you. The date the award was mailed is at the end of the notice mailed with the award.

If, however, you receive notice from a court that the other side has filed a petition to confirm the award, you no longer have 100 days to file your petition. You must then respond by filing your petition to vacate or correct the award within the time stated on the notice from the court.

D. In what court do I file my petition?

That depends. Has a lawsuit about the fees already been filed?

(1) **YES—lawsuit already filed**

If a lawsuit about the fees has already been filed, you will file your petition to vacate or correct with the same court where the lawsuit was filed, under the same case number as the lawsuit that is pending.

(2) **NO—lawsuit not yet filed**

If no lawsuit about the fees has been filed, then you will file your petition with the court that has jurisdiction over the amount of the arbitration award. If the amount of the arbitration award is \$5,000 or less, you may file your petition in small claims court. For awards over \$5,000, the superior court is the proper court.

E. What is a petition?

A petition is a technical legal document that tells the court what you want and why you are entitled to it.

You can use form ADR-103 to file a petition in superior court to correct or vacate a binding attorney-client fee arbitration award; see boxes 8b(1) and (2) on page 2 of form ADR-103. You can use Judicial Council forms SC-100 and SC-101 to file a petition in small claims court.

F. What if I am satisfied with the binding arbitration award?

If the arbitration award indicates or says that you owe money and you do not intend to petition to have the award corrected or vacated (canceled), you should pay the amount that you owe. If you do not pay it, the other party has a right to get court orders allowing him or her to collect the debt by taking and selling your property and by taking money from your paycheck and bank account.

If the arbitration award says that you are owed money, you should write the other party a letter and demand payment. If you are not paid, you can seek to enforce the arbitration award. See section G below.

G. How can binding attorney-client fee arbitration awards be enforced?

There are two procedures for enforcing binding attorney-client fee arbitration awards.

If you are the client, you have the right to ask the State Bar to assist you in enforcing the arbitration award if the following is true:

(1) Your arbitration request was filed on or after January 1, 1994; and

(2) (a) 100 days have passed from service of the award and the award is binding, or

(b) The award has become a final judgment after a trial following arbitration or after a petition to vacate, correct, or confirm the award.

You can contact the State Bar and request the form *Request for Enforcement of an Award* at:

**Mandatory Fee Arbitration
180 Howard Street, 6th Floor
San Francisco, CA 94105-1639
415-538-2020**

Any party who is owed money also has the right to request court orders allowing him or her to take property or money from the other party's paycheck and bank accounts. To get those court orders based on an attorney-client fee arbitration award, however, you must first make the arbitration award a judgment of the court. To do this, you must confirm the arbitration award in court.

(1) *What must I do to confirm the arbitration award?*

To confirm the arbitration award, you must file a petition for confirmation with the proper court within the required time limit.

(2) *How long do I have to act?*

You must file your petition for confirmation within four years after the date the arbitration award was mailed to you. That date appears at the end of the notice mailed with the award.

(3) *In what court do I have to file my petition?*

That depends on the amount owed. If it is \$5,000 or less, you may file in small claims court. If the amount owed is more than \$5,000, the superior court is the proper court in which to file your petition.

(4) *What is a petition for confirmation?*

A petition is a legal document that tells the court what you want and why you are entitled to it. You can use form ADR-103 to file a petition to confirm a binding attorney-client fee arbitration award in superior court; see box 8b(3) on page 2 of ADR-103. You can use Judicial Council forms SC-100 and SC-101 to file a petition to confirm such an award in small claims court.

(5) *What are my rights after the arbitration award is confirmed?*

When the arbitration award is confirmed, it becomes a judgment of the court. Once you have a judgment, you have a right to enforce the judgment. That means you can get court orders allowing you to collect your money. Enforcing judgments can be very technical and very complicated. The court has forms to use for this procedure.